

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

REC'D
 MAY - 8 1998
 TELECOMMUNICATIONS
 DIVISION

In the Matter of)	
)	
Implementation of the Telecommunications Act)	
of 1996:)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use of Customer)	
Proprietary Network Information and Other)	
Customer Information)	

COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹ hereby submits, pursuant to the Federal Communications Commission's ("FCC" or the "Commission") public notice released May 1, 1998,² its comments in support of the petition of the Cellular Telecommunications Industry Association ("CTIA")³ seeking deferral of the effective dates of certain new rules restricting the use of customer proprietary network information ("CPNI") to market new

¹ 360° operates cellular systems in more than 100 MSAs and RSAs in 15 states, providing cellular service to approximately 2.6 million customers. 360° also provides one-way paging services on a facilities and resold basis, resells long distance services, and offers limited Cellular Digital Packet Data Service ("CDPD").

² See Public Notice, *Pleading Cycle Established for Comments on Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information Request for Deferral and Clarification*, DA No. 98-836, CC Docket No. 96-115 (May 1, 1998).

³ See Request for Deferral and Clarification of the Cellular Telecommunications Industry Association, *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115 (April 24, 1998) ("CTIA Petition").

services. These rules, adopted in the *Second Report and Order* with an effective date of May 26, 1998,⁴ will burden unnecessarily commercial mobile radio service (“CMRS”) providers and significantly harm their ability to offer consumers high-quality, advanced services. Moreover, these rules will undermine legitimate consumer expectations regarding the nature and scope of CMRS services. Thus, the public interest will be served by a temporary deferral of the effective date of these rules in order to allow the FCC to address more thoroughly how Section 222 of the Communications Act of 1934, as amended (the “Act”), should be applied to CMRS carriers.⁵ 360° also supports CTIA’s requests for clarification of the definition of CPNI and the application of the “win-back” rule.⁶

I. THE COMMISSION SHOULD DEFER THE APPLICATION OF RULE SECTIONS 64.2005(b)(1) AND (b)(3) TO CMRS CARRIERS UNTIL IT CAN OBTAIN A COMPLETE RECORD ADDRESSING HOW SECTION 222 OF THE ACT SHOULD APPLY TO CMRS CARRIERS

Although Section 222 of the Act was designed to balance competitive concerns and a consumer’s legitimate privacy rights,⁷ the Commission has not addressed the impact of its

⁴ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, FCC No. 98-27, CC Docket No. 96-115, at ¶ 261 (Feb. 26, 1998) (“Second Report and Order”).

⁵ As CTIA correctly notes, see CTIA Petition at 8-15, the Commission has broad discretion in designating the effective dates of its rules. Section 1.103 provides that the “Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.” 47 C.F.R. 1.103(a).

⁶ CTIA seeks clarification that : (1) the term “CPNI” refers only to information about the type and amount of service customers purchase, not the names and addresses of the customers themselves; and (2) the new “win-back” rule would not apply until after a customer is no longer receiving service from its original carrier. CTIA Petition at 41-43. Although the CTIA Petition raises significant consumer issues, 360° intends to address additional equally important issues during the reconsideration stage of this proceeding.

⁷ S. Conf. Rep. No. 104-230, at 205 (1996).

rules on CMRS customer expectations and on CMRS competition. The Commission's prohibition on integrated CMRS marketing and customer retention practices discussed below are burdensome and anti-competitive, and must be reconsidered on a more complete record.

A. Bundled Services

Based upon an inadequate record, the Commission has determined that customer premises equipment ("CPE") and certain information and data services are not included within a customer's "total service" relationship with a carrier and, therefore, that carriers cannot use CPNI to market these products and services to customers absent their prior affirmative approval.⁸ The Commission's new CPNI rules will require CMRS providers to cease marketing many popular services and products, such as voice-mail and customer premises equipment ("CPE"), until they obtain customer approval. This restriction prevents CMRS providers, for the first time, from offering the kinds of integrated service bundles that have become a hallmark of the industry.⁹ This restrictive ignores the natural development of the CMRS industry and ultimately harms consumers by restricting important service choices.

CMRS is, and will remain, a highly integrated service. Service bundles that include CMRS service and CPE, as well as information services and various service features, such

⁸ *Second Report and Order* at App. B, § 64.2005(b)(1). As CTIA correctly notes, the existing record is insufficient to correctly determine the scope of a CMRS customer's "total service" for CPNI purposes. See CTIA Petition at 13-14.

⁹ The Commission has encouraged bundled CMRS services in the past. See *Bundling of Cellular Customer Premises Equipment and Cellular Service*, 7 FCC Rcd 4028, 4030 (1992) (Noting "significant public interest benefits associated with the bundling of cellular CPE and service.").

as voice mail, that enhance a customer's call management capabilities, represent the majority of CMRS offerings today. All of 360°'s new service offerings bundle service and CPE as a natural service package. The new rules will require 360° to immediately cease planned marketing efforts on 90% of the new service packages rolled out this year in its Mid-Atlantic and Southeast service regions. Customers have come to expect that their carrier will provide bundled services and that they will be informed of new bundled service options as they become available.¹⁰ This expectation is especially strong with respect to CPE bundled with the service.¹¹ In the highly competitive CMRS industry, such bundled offerings are critical in distinguishing carriers from their competition. Thus, the concept of a customer's "total service" must include these additional products and services in order to meet basic customer expectations.¹²

B. Customer Retention And "Win-Back"

The Commission's new CPNI rules also raise serious concern with respect to the flat prohibition in Section 64.2005(b)(3) on the use of CPNI for customer retention and "win-

¹⁰ Voice mail, for example, is an important integrated service because of the nature of CMRS services. CMRS customers frequently are unable to receive or answer calls while travelling, and voice mail becomes an important tool in enabling a customer to better manage his or her CMRS communications services.

¹¹ Unlike wireline subscribers, a CMRS subscriber cannot utilize a carrier's service without first obtaining CPE specifically designed and programmed to be used on that carrier's network. Thus, the CPE is an integral part of CMRS service. The rules as currently written suggest that a CMRS carrier could market new digital services without prior customer approval, but would be prevented from marketing digital CPE, an essential, integral part of the service. This illogical outcome cannot have been the intent of Congress.

¹² Although the Commission focused its new CPNI rules on consumers' expectations of privacy based upon their existing customer-carrier relationships, *Second Report and Order* at ¶ 24, the Commission largely ignores the unique, integrated nature of CMRS services described above, as well as the more comprehensive customer-carrier relationship typically developed in rendering service.

back.” In addition to the highly integrated nature of CMRS services, the CMRS industry is marked by a high level of customer mobility. This mobility is known as “churn” and can reach as high as 30% annually.¹³ A high churn rate ultimately benefits the consumer by forcing carriers to drop prices and offer more attractive service packages in an effort to retain customers. As a result, it has been 360°’s experience that customers not only have come to expect their service provider to use their CPNI for retention calls, they have come to rely on such calls to negotiate more competitive service arrangements. Restricting carriers from using CPNI for “win-back” will unnecessarily hamper a competitive practice that substantially benefits consumers.

The Commission stated in the *Second Report and Order* that it was “persuaded that customers expect that CPNI generated from their entire service will be used by their carrier to market improved service within the parameters of the customer-carrier relationship.”¹⁴ The win-back restriction, however, prevents CMRS carriers from utilizing one of the more effective methods for marketing service improvements and enhancements. If a subscriber has chosen to switch CMRS providers, the original carrier must improve its offer to maintain the customer. Counter-offers can be in the form of reduced rates, additional free minutes of use, and additional products or services added to the subscriber’s service package, to name only a few. These offers constitute enhancements to the subscriber’s existing service relationship and, therefore, are within the “parameters of the customer-carrier relationship.” Thus, win-back and retention calls should fall within the category of marketing calls that do not require prior customer approval.

¹³ *Id.* at 22-23.

II. DEFERRAL OF THE APPLICATION OF SECTIONS 64.2005(b)(1) AND (b)(3) TO CMRS CARRIERS IS NECESSARY TO PREVENT SIGNIFICANT HARM TO CMRS CARRIERS AND CONSUMERS

The new CPNI rules will harm CMRS carriers by hindering competition among carriers and by denying consumers the benefits of that competition, including lower prices and enhanced services. Although CMRS providers could use CPNI to market new services upon obtaining customer authorization, development and implementation of procedures for obtaining such authorization could take months to complete and create unnecessary added costs for the carrier. Moreover, likely customer response to such efforts remains questionable at best.¹⁵

In addition to the possibly irreversible competitive harm to carriers and consumers if CMRS carriers are forced to implement the current CPNI rules, the Commission must consider the significant financial cost to CMRS carriers. If CMRS providers must implement the current rules before seeking Commission clarification and/or reconsideration of the rules, they must completely retool their marketing programs and, in some cases, build new marketing structures and procedures from scratch at substantial costs. If, in the end, the Commission reconsiders the issues raised herein and properly changes the rules to provide for integrated marketing and win-back, for example, all of the expense incurred in implementing the old rules will have been wasted. If, on the other hand, the Commission defers the effective date of these rules, the carriers will be in a position to implement with certainty the final rules of the Commission. Thus, deferral of the effective date of the new rules represents the most efficient approach to addressing the issues raised in this

¹⁴ *Second Report and Order* at ¶ 24.

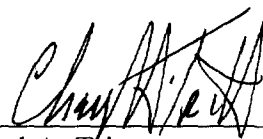
¹⁵ *See Second Report and Order* at ¶ 99.

proceeding in no way harms consumers' expectations of privacy and is in the public interest.

CONCLUSION

Section 222 of the Act was intended to balance the legitimate privacy concerns of consumers with the competitive needs of telecommunications carriers. As applied to CMRS services, however, the Commission's new rules implementing that section will harm competition with respect to CMRS services while providing no apparent corresponding privacy benefit. The Commission has attempted to apply wireline service concepts to the wireless industry without the benefit of an adequate record describing the unique marketing and service characteristics of that industry. The Commission, thus, should grant the request of CTIA and defer the effective date of the new rules for at least the requested 180 days.

Respectfully submitted,

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May 8, 1998

CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **COMMENTS OF 360° COMMUNICATIONS COMPANY** were delivered, via hand delivery, on this 8th day of May, 1998, to the following:

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